

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 659 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No
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MANJIBHAI SHAMJIBHAI SAVALIYA

Versus

BHIKHABHAI KHODABHAI SAVALIYA

Appearance:

MR PJ KANABAR for Petitioner

MR BN KESHWANI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 3, 4

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 29/06/2000

C.A.V. JUDGEMENT

Heard the learned counsel for the parties. By way of this appeal, the appellant challenges the order rejecting his application for interim relief in Special Civil Suit No.91 of 1999 pending before the learned 3rd Joint Civil Judge (S.D.), Amreli. The appellant had prayed for an injunction against sale of or interference with his possession of the land admeasuring 5 acres 14 gunthas being part of Survey No.288 in village Monvel.

2. It is the case of the appellant (original plaintiff) that the land in question, which was originally owned by him, was sold to respondent No.4 by a registered sale deed dated 19.3.1991. However, according to the appellant, the sale was in reality by way of a security of the money which was borrowed from respondent No.4 and the possession remained with him. Thereafter, against repayment of Rs.60,000, respondent No.4 had executed an agreement dated 14.5.1992 to sell the same land to the appellant. Thereafter, respondent No.4 had sold the same land to respondents Nos.1 and 2 by a registered sale deed dated 22.1.1996. It is the case of the appellant that he has already repaid the amounts due to respondents Nos.1 to 3 and respondent No.4 was required to execute a sale deed in his favour in terms of the agreement to sell executed in 1992 and that the possession of the land all throughout remained with him. Respondents Nos.1 and 2 have contested the application for interim relief and also filed an affidavit-in-reply in this Court. The learned Judge of the trial Court has elaborately discussed the material placed on record and the rival contentions. A prima facie conclusion is reached to the effect that the land in question was transferred to respondent No.4 by a registered sale deed who has, in turn, transferred the same to respondents Nos.1 and 2 and also given the ownership and possession. It is also found that defendant No.1 was in actual possession of the land and doing agricultural work and taking the crop of groundnut at the time of making of the panchnama. Therefore, on the basis of the material on record, the trial Court has found that, prima facie, the land stood transferred to respondents Nos.1 and 2 and the appellant was not in possession of the land. Accordingly, the application for interim relief came to be dismissed.

3. The learned counsel for the appellant has reiterated the same grounds and referring to the village Form 7 and 12 emphasised that the appellant is in possession of the suit land since 1991 to 1999-2000.

Respondents Nos.1 and 2 have, in this regard, stated in their affidavit-in-rely that the name of the appellant had continued in the revenue records because he had created charge of the Land Development Bank on the suit land and he had not paid the amount due from him to the said bank. It is also contended on behalf of the respondents that the respondents Nos.3 and 4 were colluding with the appellant in order to defeat the rights of respondents Nos.1 and 2. The learned advocate for the appellant has relied upon the judgment reported in (1999) 3 SCC 161 (ASHWINKUMAR K. PATEL v. UPENDRA J. PATEL) and submitted that, when some of the respondents and the documents on record supported the plea of the appellant as regards possession of the land, temporary injunction ought to have been granted. The facts of the present case are quite different insofar as a prima facie case is not made out by the appellant and his say of being in actual possession is not believed on the basis of the report of the Commissioner, who was appointed at his behest. Instead, respondent No.1 is found to be in possession. In these facts and circumstances, no ground is made out to interfere with the impugned order. Accordingly, the appeal is summarily dismissed with no order as to costs.

Sd/-

(KMG Thilake)

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